

REMARKS

The Examiner rejected claims 1-31 under 35 U.S.C. §103(a) as allegedly being unpatentable over Cochran in view of Kato et al., McCarty, Riley et al., and Leslie et al.

Applicant respectfully traverses the §103 rejections with the following arguments.

10/625,305

8

35 U.S.C. §103(a)

The Examiner rejected claims 1-31 under 35 U.S.C. §103(a) as allegedly being unpatentable over Cochran in view of Kato et al., McCarty, Riley et al., and Leslie et al.

Applicant respectfully contends that claim 1 is not unpatentable over Cochran in view of Kato, McCarty, Riley, and Leslie, because Cochran in view of Kato, McCarty, Riley, and Leslie does not teach or suggest each and every feature of claim 1. For example, Cochran in view of Kato, McCarty, Riley, and Leslie does not teach or suggest the feature: "[a] composition, comprising: aspirin, magnesium, and nattokinase, and either niacin or nitroglycerine".

The Examiner cites Cochran as a primary reference for allegedly teaching a composition comprising niacin. The Examiner cites the following secondary references for allegedly teaching a composition comprising other constituents of the composition: Riley (aspirin), McCarty (magnesium), and Kato (nattokinase).

The Examiner argues: "It would have been obvious to one of ordinary skill in the art to combine the ingredients of the cited prior art to provide for a composition since each ingredient is well known in the art. To combine these ingredients of the cited prior art to provide for the composition is an obvious modification and one of skill would have expected successful results."

In response, Applicant respectfully contends that the Examiner has not supplied a legally persuasive argument as to why a person of ordinary skill in the art would modify Cochran by the alleged teaching of Riley, McCarty, and Kato in relation to claim 1. In particular, established case law requires that the prior art must contain some suggestion or incentive that would have motivated a person of ordinary skill in the art to modify a reference or to combine references. See *Karsten Mfg. Corp. v. Cleveland Gulf Co.*, 242 F.3d 1376, 58 U.S.P.Q.2d 1286, 1293 (Fed.

Cir. 2001 ("In holding an invention obvious in view of a combination of references, there must be some suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to select the references and combine them in a way that would produce the claimed invention"). See also *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984 ("The mere fact that the prior art could be so modified would not have made the motivation obvious **unless the prior art suggested the desirability of the modification.**").

The Examiner has not made any showing of where the prior art suggests modifying a composition of the type disclosed by Cochran by adding the ingredients of aspirin, magnesium, and nattokinase. By not citing any suggestion or incentive in the prior art for modifying Cochran's composition by adding aspirin, magnesium, and nattokinase, the Examiner has failed to establish a *prima facie* case of obviousness in relation to claim 1.

In effect, the Examiner is arguing that it is obvious to combine ingredients merely because the ingredients are known, which has no legal basis. If the Examiner were correct, it would never be possible to at any time in the future to issue a patent having a claim consisting of known features. In fact, a large number of issued patents have claims consisting exclusively of known features, such that the patentability of these claims are supported only by the novelty and non-obviousness of the combination of the features. There are hundreds of thousands of such claims in issued patents. Claim 1 of the present invention falls into this category and should be subject to an analysis of whether the combination of features is novel and non-obvious, based on a legally acceptable methodology for performing such an analysis.

Moreover, Cochran teaches away from adding aspirin and nattokinase, since Cochran emphasizes using substances found naturally in the body, and both aspirin and nattokinase are

not found naturally in the body. See Cochran, col. 1, lines 10-13: "the invention relates to various compositions, including, but not limited to, hormones, vitamins, enzymes, amino acids, minerals and other substances **found naturally in the body**" (emphasis added).

In addition, while Applicant acknowledges that nattokinase is known, Applicant traverses the Examiner's contention the nattokinase is well known. There does not exist a large amount of published literature on nattokinase. Applicant contends that Kato discloses nattokinase as an ingredient of Barley Yam Natto derived from a processing of soybean, barley, and yam. Kato does not teach or suggest that the nattokinase be isolated from the Barley Yam Natto in order to be added to another composition. Nor does Kato teach or suggest that other additives such as aspirin, magnesium, etc. be added to the Barley Yam Natto. Therefore, Applicant contends that it is not obvious from the prior art that nattokinase should be included in the composition of claim 1.

Additionally, the Examiner's argument that "one of skill would have expected successful results" is ambiguous, since the Examiner has not indicated what the word "results" pertain to.

Based on the preceding arguments, Applicant respectfully maintains that claim 1 is not unpatentable over Cochran in view of Kato, McCarty, Riley, and Leslie, and that claim 1 is in condition for allowance. Since claims 2-31 depend from claim 1, Applicant contends that claims 2-31 are likewise in condition for allowance.

As to the dependent claims reciting ranges (i.e., claims 13, 15, 17, 19, 21, 23, 25, 27, 29, and 31), the Examiner argues: "To vary the amounts is clearly within the skill of an ordinary artisan."

10/625,305

11

In response, Applicant contends that the issue is not whether an ordinary artisan could vary the amounts of each constituent, but whether it is obvious to utilize the claimed ranges. The Examiner has not cited any references disclosing the claimed ranges, and the Examiner has not provided any legally acceptable argument as to why a person of ordinary skill in the art would find it obvious to utilize the claimed ranges

Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness in relation to claims 13, 15, 17, 19, 21, 23, 25, 27, 29, and 31.

Applicant respectfully contends that the Examiner has provided any arguments to support the rejection of claims 2-11, 14, and 24.

Applicant respectfully requests that each claim of claims 2-11, 14, and 24 either be rejected based on argument or be indicated to be allowable.

CONCLUSION

Based on the preceding arguments, Applicant respectfully believes that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicants invites the Examiner to contact Applicants' representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account No. 19-0513.

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10/625,305

13